

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CIVIL APPLICATION NO.9285 OF 2007
IN WRIT PETITION NO.3701 OF 2007

(Citizen Forum, Maharashtra and others vs. State of Maharashtra and others)

Office Notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's orders

CORAM : D.D. SINHA AND
SMT. VASANTI A. NAIK, JJ.

DATED : DECEMBER 19, 2007

Heard Shri Kilor, learned Counsel
for the petitioners, Mrs. Dangre, learned
Additional Government Pleader for the
respondent no.1, and Shri Singh, learned
Additional Solicitor General of India and
Shri Deshpande, learned Counsel for the
respondent nos. 2 and 3.

Civil Application No.9285/2007 is
moved by the petitioners seeking
permission to amend the petition.

Shri Kilor, learned Counsel for the

petitioners, submits that by the proposed amendment, the petitioners want to implead 'M/s. Crompton Greaves Ltd., a Company registered under the Companies Act, 1956' as a party respondent in whose favour franchise agreement dated 26.10.2007 has been executed by the respondent no.2 during pendency of the petition. Similarly, petitioners want to incorporate paragraphs 44-A, 44-B, 44-C and 44-D in the petition. By the last proposed amendment, petitioners want to add prayer clauses (1-A) and (1-B).

It is contended by Shri Kilor, learned Counsel for the petitioners, that the present petition has been filed propagating the public cause and called in question the move made by the respondent no.2 to privatise the distribution network of Nagpur by appointing distribution franchisees. It is submitted that petitioners are raising a grievance that while appointing distribution franchisees, the respondent no.2 has violated statutory norms and also ignored the interest of consumers. Similarly, entire

process adopted by the respondent no.2 is not transparent and, therefore, the petitioners have filed the present petition wherein by prayer clause (1), the petitioners have sought direction to quash and set aside the tender notice issued by the respondent no.2 in the month of July 2007 for appointment of distribution franchisees for distribution divisions of Gandhibagh, Civil Lines and Mahal of Nagpur Urban Circle.

It is further contended by the learned Counsel for the petitioners that since during pendency of the petition, the respondent no.2 has executed agreement referred to hereinabove in favour of M/s. Crompton Greaves Ltd., the said Company becomes a necessary party to the present petition. It is submitted that outcome of the adjudication is going to affect M/s. Crompton Greaves Ltd. as well as agreement executed between respondent no.2 and the said Company, and, therefore, the petitioners are seeking permission to implead the said Company as a party respondent in the petition as well as

quashing of the said agreement, which is connected and incidental to the main cause of action involved in the petition. It is, therefore, prayed that amendment application may kindly be allowed.

Shri Singh, learned Additional Solicitor General of India, has opposed the prayer of petitioners made in the civil application on the ground that though there was a prayer made in the writ petition for grant of interim relief, however, in spite of fact that same was though pressed, this Court declined to oblige the petitioners. It is contended that now it is not open for the petitioners at such a belated stage to pray for grant of interim relief when they failed to do so at the initial stages.

Shri Singh, learned Additional Solicitor General of India, further submits that since this Court did not grant any interim relief to the petitioners earlier, there was no bar for the respondent no.2 to enter into agreement with M/s. Crompton Greaves Ltd. and, therefore, the said

agreement was executed and after execution of the said agreement, if petitioners have any grievance in respect of execution of such contract, it is an independent cause of action and, therefore, petitioners are required to file a separate petition.

It is lastly contended by Shri Singh, learned Additional Solicitor General of India that neither M/s. Crompton Greaves is a necessary party in the present petition nor the petitioners may be permitted to raise the challenge to the agreement dated 26/10/2007 by way of amendment.

We have given anxious thought to the contentions canvassed by the learned respective Counsel for the parties and also considered the cause of action involved in the main petition vis-a-vis the proposed amendment. In the instant petition, the petitioners have challenged the very tender notice issued by the respondent no. 2 in the month of July 2007 on various grounds including the main ground that the

whole process is not in the public interest and the same is also not consistent with the object of Electricity Act, 2003. The prayer clause (1) of the petition discloses that petitioners are seeking direction for quashing of the said tender notice pursuant to which appointment of distribution franchisees is done by the respondent no. 2. At this stage we are not adjudicating upon merits of the matter and the only issue which we have to consider is whether the proposed amendment, if permitted, would change the nature of cause of action involved in the main petition.

In the backdrop of the above referred facts, we are of the view that the proposed amendment, if permitted, will not change the basic cause of action involved in the main petition. However, at this stage we do not want to express anything one way or the other, which may have some bearing on the merits of the matter.

We are quite aware that any kind of delay in such matters is not advisable and such issues are required to be decided as early as possible in order to avoid unnecessary complications and loss of

revenue. Considering all the aspects, it will be in the interest of parties to the petition to dispose of the petition finally at the stage of admission on 9th January 2008.

At this stage, Shri Singh, learned Additional Solicitor General of India submits that since there is an interim order of status quo operating, there would be some delay in implementing the terms and conditions of agreement, which will result in considerable loss to respondent no.2 and, therefore, petitioners may be put to terms in this regard.

It is no doubt true that if petition would not have been fixed for hearing, we would have considered the request of the learned Additional Solicitor General of India subject to hearing learned Counsel for the petitioners. However, since we are disposing of the petition finally on 9th January 2008, we do not propose to issue any direction at this stage.

In the result, civil application is allowed. Appropriate amendment be carried out within a period of two weeks. Shri Agrawal, learned Counsel waives notice on behalf of added respondent no.4

M/s. Crompton Greaves Ltd.

Put up on 9th January 2008 along with Writ Petition Nos. 5855/2007 and 5100/2007.

Copy of this order, duly authenticated by the Court Sheristedar, be given to Shri Deshpande, learned Counsel for the respondent nos. 2 and 3.

JUDGE

JUDGE

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